

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE-CHAIRMAN PAUL CLARK**, on March 25, 2003 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pamela Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: SB 362, SB 400, SB 410, 3/18/2003
Executive Action: HB 658-Do Pass As Amended

HEARING ON SB 400

Sponsor: SEN. KEN TOOLE, SD 27, Helena, Montana

Opening Statement by Sponsor:

SEN. TOOLE opened the hearing on SB 400 and stated that this bill is to revise the railroad vandalism act. There are two provisions in this bill:

- 1) To reduce the penalties.
- 2) To eliminate the "sunset."

SEN. TOOLE informed the Committee that this bill is not about graffiti.

{Tape: 1; Side: A; Approx. Time Counter: 16 - 64}

Proponents' Testimony:

Pat Keim, Burlington Northern/Santa Fe Railroad (BNSF/RR), rose in support of SB 400. **Mr. Keim** stated that the organization he represents has 2,135 miles of track, 64 freight trains and two passenger trains "running" each day in the State of Montana. In further testimony by this witness, the Committee was informed that the previous bill has had an effect, vandalism has decreased in this state. Currently there are five investigations on-going at this time in the state.

{Tape: 1; Side: A; Approx. Time Counter: 64 - 135}

Richard Flink, Burlington Northern/Santa Fe Railroad (BNSF/RR), rose in support of SB 400. **Mr. Flink** spoke to the Committee about the dangers that are present in a railroad yard. He also spoke about the need for security in these railroad yards due to the vandalism and more recently for any potential terrorist acts that may happen.

{Tape: 1; Side: A; Approx. Time Counter: 135 - 200}

Pete Lawrenson, Montana RailLink, rose in support of SB 400. He stated that the organization that he represents wants to prevent accidents and injuries; with this bill, that can happen. **Mr. Lawrenson** spoke of the graffiti that can obscure the numbers on the railroad cars; this leads to security and or/police officers being unable to respond to the proper car in times of need.

{Tape: 1; Side: A; Approx. Time Counter: 200 - 280}

Mike Halligan, Washington Corporation/Montana RailLink, spoke in support of SB 400. He stated that this bill deals with the problem of vandalism. In further testimony, Mr. Halligan explained the "sunset" criteria, the graduated penalties and the stow-away provision.

EXHIBIT(juh63a01)

EXHIBIT(juh63a02)

EXHIBIT(juh63a03)

{Tape: 1; Side: A; Approx. Time Counter: 280 - 377}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. FACEY, NOENNIG, SHOCKLEY, NEWMAN, HARRIS, and GUTSCHE questioned Mr. Keim, Mr. Lawrenson, and Mr. Halligan extensively. Among the questions asked were how many of the prosecutions have concluded and with what charges, statistics on the decrease in vandalism since the previous bill was passed, how the public is being educated and statistics related to that. Further questioning continued regarding the "sunset" provision of the previous bill, whether there are any federal provisions, why more alleged crimes are not brought forth to the county attorneys and if this is just another "designer crime" bill.

{Tape: 1; Side: A; Approx. Time Counter: 377 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 188}

Closing by Sponsor:

SEN. TOOLE closed the hearing on SB 400 by reiterating to the Committee that the railroad does not prosecute for alleged crimes; the county attorney does. He stated again that this bill is not about graffiti, it is about deaths that may occur and the environmental problems that can occur from train derailments due to the vandalism problems.

{Tape: 1; Side: B; Approx. Time Counter: 188 - 198}

HEARING ON SB 362

Sponsor: SEN. DUANE BRIMES, SD 20, Clancy, Montana

Opening Statement by Sponsor:

SEN. GRIMES opened the hearing on SB 362 by stating that this bill is about Minors In Possession (MIP) and the penalties they will face if this bill is enacted. The sponsor stated that alcohol use by minors is harmful, citing medical criteria that supports this statement. **SEN. GRIMES** continued to state that this bill is not about punishment, but it is to be used as an education and prevention tool. The Senator proceeded to explain the changes in the current statute that this bill would make.

EXHIBIT (juh63a04)

EXHIBIT (juh63a05)

EXHIBIT (juh63a06)

{Tape: 1; Side: B; Approx. Time Counter: 198 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 59}

Proponents' Testimony:

Roland Mena, State of Montana, Department of Public Health and Human Services, rose in support of SB 362. He informed the Committee that he participated in meetings throughout the State that focused on the teen drinking problems. There are approximately 25,000 teens from the ages of 12-17 that binge drink, meaning five or more drinks in one setting, within a two-week period. He continued to speak about the harmful consequences of alcohol and the availability of alcohol to teenagers.

{Tape: 2; Side: A; Approx. Time Counter: 59 - 128}

Bill Muhs, Mothers Against Drunk Driving, (MADD), rose in support of this bill. Mr. Muhs stated that after automobile accidents and suicide, alcohol is the next leading cause of deaths among teenagers. According to statistics, the average age that teens start drinking in Montana is 13 years old, with Montana teenagers drinking and driving more than anywhere else in the country. Montana ranks as the fourth highest in the country for teenagers drinking. Mr. Muhs contends that parents are sometimes enablers, thinking that it is a "rite of passage." He stated to the Committee that the penalties in Montana are lower than in California, where they lose their license for one year and in Washington, where they lose it for two years.

EXHIBIT(juh63a07)

EXHIBIT(juh63a08)

{Tape: 2; Side: A; Approx. Time Counter: 128 - 210}

Mike Rupert, Boyd Andrew Service Center, rose in support of SB 362. Mr. Rupert stated that his organization would be a provider of the program currently used.

{Tape: 2; Side: A; Approx. Time Counter: 210 - 231}

Don Hargrove, Montana Addiction Services, spoke to the Committee about the deterrent effects this bill would have.

{Tape: 2; Side: A; Approx. Time Counter: 231 - 256}

Jim Smith, Montana County Attorneys, spoke in support of SB 362.

{Tape: 2; Side: A; Approx. Time Counter: 256 - 270}

Candace Payne, Rimrock Foundation, rose in support of SB 362.

{Tape: 2; Side: A; Approx. Time Counter: 270 - 278}

Dan Haffey, Butte Health Department, rose in support of SB 362.

{Tape: 2; Side: A; Approx. Time Counter: 278 - 304}

Roger Curtiss, Alcohol and Drug Services, rose in support of SB 362.

{Tape: 2; Side: A; Approx. Time Counter: 304 - 322}

Mona Jamison, Boyd Andrew Services Center, rose in support of SB 362 and stated that this is a "wake-up" call. She further stated that this bill will send a message to the young people of Montana.

{Tape: 2; Side: A; Approx. Time Counter: 322 - 361}

Kristi Blazer, Montana Beer and Wine Wholesalers, stated that the organization she represents is in full support of SB 362. **Ms. Blazer** further stated that this organization has zero-tolerance for underage drinking.

{Tape: 2; Side: A; Approx. Time Counter: 361 - 380}

Wayne Cooperider, Montana Sheriffs and Peace Officers Association, spoke in support of SB 362 and stated that there needs to be education for the young people and their parents.

{Tape: 2; Side: A; Approx. Time Counter: 380 - 408}

Opponents' Testimony:

Don Simpson, Montana Association of Drug and Alcohol Counselors, rose in opposition to SB 362. Mr. Simpson and the organization he represents are opposed to the language in the bill that speaks to the issue of who can provide the services to participants in the various programs. He referenced only the state approved programs.

{Tape: 2; Side: A; Approx. Time Counter: 408 - 487}

Scott Crichton, ACLU, stated that his organization was pleased with the interim committee's work; however, they are opposed to the language on Page 5, Section F regarding the "lists" and who maintains and keeps them.

{Tape: 2; Side: A; Approx. Time Counter: 487 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 14}

Diane McLaverty, St. Patrick's Hospital, stated that the organization she represents is supportive of the bill; however, St. Patrick's Hospital opposed the language regarding "approval by the State." Ms. McLaverty informed the Committee of the accreditations St. Patrick's have, the licenses and Federal requirements, the services provided without the licenses required by the State and that the hospital has attempted to get the license from the State with no success, for unknown reasons.

{Tape: 2; Side: B; Approx. Time Counter: 14 - 85}

Ed Maloney, St. Patrick's Hospital, opposed SB 362 due to the language regarding the license portion of the bill.

{Tape: 2; Side: B; Approx. Time Counter: 85 - 106}

Marlene O'Connell, Benefis HealthCare, spoke in opposition to SB 362 for the reason that this bill will limit the number of service providers for the various programs. The bill would limit the number of options for the families. This organization requested the Committee to modify the "license provider requirement."

{Tape: 2; Side: B; Approx. Time Counter: 106 - 144}

Dirk Gibson, Benefis HealthCare, spoke in opposition to SB 362. The organization that he represents is opposed to the language regarding "qualified providers."

{Tape: 2; Side: B; Approx. Time Counter: 144 - 181}

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. PARKER, THOMAS, GALLUS, LANGE, GUTSCHE, NOENNIG, and FACEY asked numerous questions of the sponsor, Mr. Gibson, Mr. Mena, Mr. Crichton, and Ms. McLaverty. Among the questions asked were the requirements needed to become licensed by the State of Montana, why DPHHS will allow only one service provider per county, the "best use of funds" language and the site reviews criteria. The witnesses were also asked about the driver's license forfeiture/suspension, the confidentiality standards that would be used, waiting lists for families and the provisions for who pays for services.

{Tape: 2; Side: B; Approx. Time Counter: 181 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 33}

Closing by Sponsor:

SEN. GRIMES closed the hearing on SB 362 and stated to the Committee that the alcohol "scene" is much different then when he was a teenager. The most important parts of this bill are the driver's license suspension and the parent's participation. **SEN. GRIMES** stated that this bill will open teenagers' eyes.

{Tape: 3; Side: A; Approx. Time Counter: 33 - 80}

HEARING ON SB 410

Sponsor: **SEN. MIKE TAYLOR, SD 37, Proctor, Montana**

Opening Statement by Sponsor:

SEN. TAYLOR opened the hearing on SB 410 and stated that this bill will address the problem of lawsuits that are filed; apparently without merit.

{Tape: 3; Side: A; Approx. Time Counter: 80 - 126}

Proponents' Testimony:

Ellen Engstedt, Montana Wood Products Association, spoke of the seven timber sales in Montana that were halted because of lawsuits and the lengthy process that all parties must endure to resolve these lawsuits.

{Tape: 3; Side: A; Approx. Time Counter: 126 - 161}

Don Allen, Western Environmental Trade Association, spoke in support of SB 410.

{Tape: 3; Side: A; Approx. Time Counter: 161 - 202}

Gail Abercrombie, Montana Petroleum Foundation, spoke in support of SB 410.

{Tape: 3; Side: A; Approx. Time Counter: 202 - 231}

Pat Montabaln, Montana Oil Association, rose in support of SB 410.

{Tape: 3; Side: A; Approx. Time Counter: 231 - 242}

Opponents' Testimony:

Matt Clifford, Clarkfork Coalition, rose in opposition to SB 410 and spoke to the Committee about the Yellowstone Pipeline incident and how it relates to this bill.

{Tape: 3; Side: A; Approx. Time Counter: 242 - 300}

Anne Hedges, Montana Environmental Information Center, rose in opposition to this bill and spoke at length to the Committee; she also spoke of the current statute that addresses frivolous lawsuits. **Ms. Hedges** stated that if this bill is enacted, there would be a constitutional challenge.

{Tape: 3; Side: A; Approx. Time Counter: 300 - 382}

Don Judge, Teamsters Local 190, Montana Chapter of the Sierra Club, spoke in opposition to SB 410 and stated that there are current statutes to address the issues raised by this bill. He also stated that "irreparable harm" would be done to the State of Montana without lawsuits filed.

{Tape: 3; Side: A; Approx. Time Counter: 382 - 479}

John Wilson, Montana Trout Unlimited, spoke in opposition to SB 410 regarding the water rights as to both senior and junior water users. Mr. Wilson also spoke of the "stream flow" rights.

{Tape: 3; Side: A; Approx. Time Counter: 479 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 6}

Michelle Reinhart, Northern Plains Resource Council, spoke in opposition to SB 410; citing mistakes that have been made by the Department of Environmental Quality.

{Tape: 3; Side: B; Approx. Time Counter: 6 - 16}

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. HARRIS, CLARK, LANGE, FACEY, and GUTSCHE questioned the sponsor and Mr. Clifford about the broad language in the bill, the possibility that the ordinary person may have no access to the courts if a bond is required and the Haines Pipeline incident.

{Tape: 3; Side: B; Approx. Time Counter: 16 - 149}

Closing by Sponsor:

SEN. TAYLOR closed the hearing on SB 410 by stating that the law is already there and this bill is only changing the wording from "could" to "shall."

{Tape: 3; Side: B; Approx. Time Counter: 149 - 190}

EXECUTIVE ACTION ON HB 658

Motion: REP. CLARK moved that HB 658 DO PASS AS AMENDED.

Discussion:

Mr. MacMaster explained the amendments within the bill, with **REPS. NOENNIG, SHOCKLEY, CLARK, and STOKER** discussing the technical aspects of the bill, the engineers and the judges discretion and "the greatest public need" issue. They also spoke of current law, disputable presumption, the need for language regarding; licensed, professional, engineer or deletion thereof.

Vote: Motion that HB 658 DO PASS AS AMENDED carried 10-8 with
REPS. CLARK, FACEY, GUTSCHE, HARRIS, MALCOLM, NOENNIG, RASER, and
SALES voting no. (roll call vote)

{Tape: 3; Side: B; Approx. Time Counter: 190 - 480}

ADJOURNMENT

Adjournment: 12:30 P.M.

REP. JIM SHOCKLEY, Chairman

PAMELA SCHINDLER, Secretary

JS/PS

EXHIBIT (juh63aad)